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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,089	01/15/2002	Allan Ginsburg	033323-002	1255

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EXAMINER

KRAMER, JAMES A

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 08/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/045,089	Applicant(s) GINSBURG ET AL.	
	Examiner James A. Kramer	Art Unit 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forsythe et al. in view of Hotz.

Forsythe teaches a method and system for selecting and purchasing media advertising.

With respect to claim 1, Forsythe teaches a revenue maximization system which determines a price for units of inventory based on predetermined pricing considerations wherein said units are advertising opportunities (see for example column 6, line 48 through column 7, line 5). Applicant argues in the Remarks with the amendment filed 6/8/06 that a cost-per-spot and a cost-per-point, as previously relied upon by Examiner focus on the cost of a unit of advertising versus the price charged. Examiner finds this argument persuasive and thus submits the cited portions of Forsythe which teaches a rate request and the submission of a rate from a media outlet. It is the Examiner's position that such a manual operation (e.g. email or fax to the media outlet and then submission of the rate from the media outlet via a rate submission form) represents Applicant's revenue maximization system it allows the system to "determine a price for said units based on predetermined pricing considerations."

It is further the position of the Examiner that the media outlet inherently attempts to maximize their revenue when submitting a rate/price. There is simply no other reason a business

Art Unit: 3627

would submit a price except in an attempt to maximize their revenue. Therefore under the broadest reasonable interpretation Forsythe teaches Applicant's revenue maximization system.

With respect to claim 1, Forsythe teaches a central information storage system which generates scenarios wherein various combinations of units are grouped together to meet a buyer's criteria wherein the buyer's criteria includes number of people and frequency people will be exposed to the advertisement units (see for example column 7, lines 5-35 and 56-57).

Forsythe further teaches a scenario planner to display various scenarios generated by the central information storage system (see for example column 7, lines 15-18).

With respect to claim 1, Forsythe does not specifically teach a performance measurement system for measuring performance of a medium in which the units are used. Examiner notes here that one of ordinary skill in the art would recognize that the invention of Forsythe requires some sort of performance measurement system in order to properly generate a cost-per-spot..

Hotz teaches Market research companies, exemplified by "The Arbitron Company", "ACNielsen Company" and "Media Metrix" and "NetRatings" can be most generally described as providing statistical surveys of consumer behavior which includes; radio listening, television viewing, Internet usage, consumer purchasing and demographic data. This data can be used for setting advertising rates for radio and television and for tracking consumer behavior with respect to a particular company or product (see column 1, lines 57-66).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Forsythe to specifically include the performance measurement system

Art Unit: 3627

for measuring performance of a medium in which the units are used as taught by Hotz in order to properly generate the cost-per-spot of Forsythe.

Forsythe further teaches the predetermined pricing considerations include category of buyer (see for example column 1, lines 29-31), unsold units (see for example column 3, line 7) and budget.

Forsythe further teaches wherein the buyer's criteria further includes the desired budget for purchase of units and performance measurements (see for example column 7, lines 55-57).

Applicant further claims that the claimed revenue maximization system utilizes functions of sell-out forecasting, revenue forecasting, fuzzy rules and price adjustment as well as economic factors which influence demand and various measurement noises are filtered out of these factors. Examiner notes that these features are all included within system such as TAPSCAN, TVSCAN, and the other software noted from SMARTPLUS, Strata Software, COREMedia Systems, Inc., Telmar and SQAD and SPARC. (see column 2, lines 17-37).

Examiner notes that claims 8-21 are substantially similar to claims 1-7 and therefore are unpatentable as obvious in view of the rejection of claims 1-7 as presented above. Applicant is reminded that any argument in contrast to this statement is an indication of patentably distinct subject matter and may require a restriction requirement.

Response to Arguments

Applicant's arguments, see Amendment, filed 6/8/06, with respect to the rejection(s) of claim(s) 1-21 under 35 USC 103(a) have been fully considered and are persuasive. Specifically Applicant argues that Examiner interpretation of revenue maximization system which determines a price as being taught by Forsythe's cost-per-spot and/or cost-per-point is incorrect since a cost-per-spot and a cost-per-point are based on the cost to the media outlet and not a price charged by the media outlet. As noted above, Examiner finds this argument persuasive.

However, Examiner believes that Forsythe does teach price determination. As such Examiner applies a new interpretation of the Forsythe reference in this Office Action. Based on this new interpretation Examiner has decided to make this Office action non-final, in order to afford Applicant an opportunity to respond to the new interpretation.

With respect to claim 8, Applicant argues that the prior art fails to teach obtaining the history of the buyer, if any. Examiner notes that this is alternative language. As such, Examiner notes that Forsythe need only teach a system which does not retrieve history data when there is none. Examiner believes Forsythe does that.

With respect to claim 11, Applicant argues that the prior art fails to teach filtering out media outlets. Examiner notes that the schedule of Forsythe does filter out media outlets in order to insure certain reach and frequency thresholds (see column 7, lines 55-57).

Art Unit: 3627

With respect to claim 12, Applicant argues that Forsythe fails to teach a performance measurement system. However, Applicant correctly notes that Examiner relies on Hotz for this feature as the Office Action correctly addresses this deficiency in Forsythe.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent Application number 2003/0050827 to Hennessey teaches a method for determining pricing/rate of an advertisement.

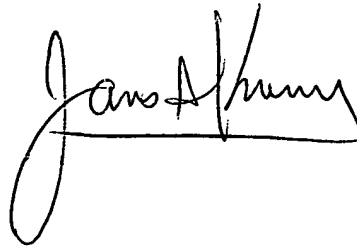
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Kramer whose telephone number is (571) 272 6783. The examiner can normally be reached on Monday - Friday (8AM - 5PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272 6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3627

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

James A. Kramer
Examiner
Art Unit 3627

A handwritten signature in black ink, appearing to read "James A. Kramer", with a large, stylized loop at the end of the signature.

jak
8/10/06